IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 26543 of 2007(I)

CMA.4/2007 of SUB COURT, PERUMBAVOOR
OS.75/2007 of MUNSIFF COURT, PERUMBAVOOR

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PETITIONERS:

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1. INDIRA, W/O GOPALAKRISHNAN NAIR,
   AGED 51 YEARS, MATTATHIL PUTHANPURAYIL HOUSE,
   NJARALLOOR KARA, PATTIMATTOM VILLAGE,
   KUNNATHUNADU TALUK, ERNAKULAM.

2. BINDU, D/O INDIRA, AGED 32 YEARS,
   RESIDING AT MATTATHIL PUTHENPURAYIL HOUSE,
   NJARALLOOR KARA, PATTIMATTOM VILLAGE,
   KUNNATHUNADU TALUK, ERNAKULAM.

BY ADV. SRI.SABU THOZHUPPADAN

RESPONDENTS:

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1. HARIDAS, S/O.RAMAKRISHNAN NAIR,
   AGED 43 YEARS, PULLANTHARAYIL HOUSE, NJARALLOOR
   KARA, PATTIMATTOM VILLAGE, KUNNATHUNADU TALUK,
   ERNAKULAM.

2. SOBHANA, W/O MADHAVAN KUTTAN,
   AGED 47 YEARS, PULLANTHARAYIL HOUSE,
   NJARALLOOR KARA, PATTIMATTOM VILLAGE,
   KUNNATHUNADU TALUK, ERNAKULAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/09/2007, ALONG WITH WPC NO. 26635 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING :

M.N.KRISHNAN, J

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W.P.(C) Nos. 26543 & 26635 OF 2007

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Dated this the 10th day of September 2007

JUDGMENT

These writ petitions are filed against the order of the Sub Court,Perumbavoor in C.M.A.Nos.3 & 4 of 2007. C.M.A.No.3 of 2007 is filed against the order of the Munsiff's Court, Perumbavoor in I.A.No.698/2007 in O.S.No.75/2007 and C.M.A.No.4 of 2007 is filed against the order in I.A.No.725 in O.S.No.78 of 2007. The court below after considering the entire matter allowed I.A.No.698/2007 whereby the respondents in the application were restrained by an injunction from destroying plaint B schedule way or obstruct the user of plaint B schedule by the plaintiffs and dismissed the other applications. In the C.M.A. also the said findings were confirmed. Under Article 227 of the Constitution of India, this court has got only a very limited jurisdiction and unless it is proved to be totally erroneous, this court may not be justified in interfering with it. The appellate court had referred to the Commissioner's report and also held that there is a way and further there is no other pathway for the ingress and egress of the respondents. The court was satisfied that

the balance of convenience and the irreparable injury are also in favour of the respondents. The court below also found that the Commissioner has clearly stated that there is a line of stone placed separating the plaint schedule pathway from the properties of the appellant. So concurring with the findings of the trial court it dismissed the C.M.As. Paragraph 13 of the order would reveal that Ext.C1 shows the existence of the pathway and further found that on a subsequent visit, he was able to see the evidence of attempt to tamper with the way. It was under these circumstances, the court granted an order of injunction.

I do not find any ground to interfere with the decision rendered by the court below. Therefore the writ petitions are dismissed. But I direct the court below to have an expeditious trial of the cases and attempt to dispose of the matter within six months from today. I further direct that the observations contained in any of the orders shall not be looked into for the disposal of the cases on merits.

M.N.KRISHNAN, JUDGE

Cdp/-